



THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK

Date: November 20, 2013

Sponsored by Council Members: Motsavage, Matzo, Rennia, Mihalko, Berg, Papastrat, Webb

Introduced by Committee: Finance

RESOLUTION

entitled

A RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO AN AGREEMENT WITH THE
BINGHAMTON LOCAL DEVELOPMENT
CORPORATION (BLDC) FOR THE USE OF FY
39 CDBG FUNDS IN AN AMOUNT NOT TO
EXCEED \$144,000

WHEREAS, the Binghamton Local Development Corporation ("BLDC") provides economic development services to the City of Binghamton as outlined in the Binghamton New York Community Development Block Grant Program as approved by the Common Counsel and the United States Department of Housing and Urban Development ("HUD") and as further set forth in the agreement; and

WHEREAS, the City wishes to renew the agreement with the BLDC for the use of FY 39 CDBG funds in an amount not to exceed \$144,000 through November 30, 2014, as set forth in the attached Sub-Recipient Agreement.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session does hereby:

RESOLVE, that the Mayor, or his designee, is hereby authorized to enter into an agreement, approved as to form and content by the Office of Corporation Counsel, for economic development services with the Binghamton Local Development Corporation for the use of FY 39 CDBG funds in an amount not to exceed \$144,000 through November 30, 2014, as set forth in the attached Sub-Recipient Agreement.

I hereby certify the above to be a true copy
of the legislation adopted by the Council
of the City of Binghamton at a meeting
held on 11/20/13. Approved by the
Mayor on 11/21/13.



**SUBRECIPIENT AGREEMENT
BETWEEN
CITY OF BINGHAMTON
AND
BINGHAMTON LOCAL DEVELOPMENT CORPORATION
FOR
ECONOMIC DEVELOPMENT PROGRAMS**

THIS AGREEMENT, including Exhibit A (Budget), Exhibit B (OMB Circulars A-110, A-122, and A-133), and Exhibit C (Permanent Resolution No. _____), attached hereto and made a part hereof, entered this ___day of _____, 2013 by and between the City of Binghamton (herein called the “Grantee”) and the Binghamton Local Development Corporation (herein called the “Subrecipient”).

WITNESSETH THAT: WHEREAS, the Grantee has entered into a contract with the United States Department of Housing and Urban Development (HUD) for a grant to execute a Community Development Block Grant (CDBG) Program, to give maximum feasible priority to activities which will benefit low and/or moderate income families/individuals or aid in the prevention or elimination of slums or blight pursuant to Title I of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended by the Housing and Community Development Act of 1977 (P.L. 95-238) and all other amendments; and

WHEREAS, the Grantee desires to engage the Subrecipient to render certain services in connection therewith; and

WHEREAS, the Subrecipient desires to perform such services as outlined in the Grantee’s Annual Action Plan as approved by the Binghamton City Council and the United States Department of Housing and Urban development and as outlined herein; and

WHEREAS, the parties have an existing agreement dated December 20, 2012, and parties wish to extend such agreement.

WHEREAS, this Agreement has been approved by the Grantee by Permanent Resolution No. _____, Exhibit C annexed hereto and made a part hereof. ,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

A. Activities

The Subrecipient will be responsible for administering funding programmed for Economic Development activities utilizing CDBG Fiscal Year 39 funds in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG program:

Program Delivery

To encourage business and industrial development and retention by administering low interest loan programs and other related financial incentives in accordance with the Subrecipient's corporate powers, HUD regulations and guidelines developed and approved by the Subrecipient's Board of Directors to eligible businesses located within the municipal boundaries of the Grantee;

To develop partnerships, enhance outreach efforts, and provide technical assistance to the business community, financial institutions and other economic development entities in support of the City's economic development strategy, in conjunction with the Binghamton Economic Development Office;

To support the efforts of the Grantee to relieve and reduce adult unemployment, maintain, improve and create job opportunities and promote maximum employment, and promote the instruction and/or training of low/moderate income individuals to improve or develop their capabilities for such jobs through appropriate partnerships and outreach.

Economic Development Services

- To conduct outreach activities to advance Subrecipient programs and economic development goals;
- To participate in partnerships that promote and enhance economic opportunities;
- To create and provide appropriate reports to HUD, the Grantee, and the community concerning Subrecipient activity;
- To maintain the records required to administer loan programs, monitor and document loan program repayments in compliance with HUD and Subrecipient requirements.

B. National Objectives

- All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208. The Subrecipient certifies that the activities carried out under this Agreement will benefit low- and moderate-income persons.
- Subrecipient loans from CDBG funding require the creation of one full time equivalent for each \$35,000.00 loaned. At least 51% of those persons initially hired must come from households that are defined as low to moderate income in accordance with HUD income guidelines.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment include providing technical assistance up to 50 businesses that are anticipated to retain and/or create full-time equivalent jobs that are either held by or made available to low/moderate income persons.

D. Staffing

The Subrecipient is currently staffed by an Executive Director, Assistant Director, Financial Analyst, and an Account Clerk.

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after receiving written notice from the Grantee, contract suspension or termination procedures may be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient are ongoing pursuant to the existing agreement from December 20, 2012 through November 30, 2013. The term of this Agreement will extend from December 1, 2013 through December 31, 2014. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

The program budget is annexed hereto as Exhibit “A” and made a part hereof.

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

- A. It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed One Hundred Forty Four Thousand Dollars (\$144,000.00) upon the Subrecipient rendering services in accordance with the Scope of Services set forth herein to the full satisfaction of the Grantee. The Subrecipient shall submit payment requests 30 days after the following reporting periods: December 1, 2013 – March 31, 2014; April 1, 2014 – June 30, 2014; July 1, 2014 – October 31, 2014; and November 1, 2014 – December 31, 2014. The Grantee will attempt to process payment requests within 30 business days of receipt of a complete and properly documented Claim for Payment Form, in such a format as shall be prescribed by the

Grantee. Inability by the Grantee to pay such claims within 30 business days shall not create a case of action. Claims shall be paid as soon as reasonable.

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance funds and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the Grantee on behalf of the Subrecipient.

The Subrecipient shall not expend CDBG funds in excess of the agreed amount. Any such excess shall be the responsibility of the Subrecipient. Any written requested modification to increase the contractual amount must be approved by the Common Council of the City of Binghamton by a proper resolution or ordinance.

- B. This Agreement shall be subject to any and all reductions of federal funds pursuant to the Gramm-Rudman Act or any other agreement between the President and Congress. In the event that CDBG funds made available to the Grantee are reduced because of the Gramm-Rudman Act or any agreement, a like percentage of reduction of funds will be made from the funds authorized under this Agreement. The Grantee will have the right to immediately implement said reduction of funding.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Subrecipient: Merry Harris, Executive Director
Binghamton Local Development Corporation
City Hall
38 Hawley Street
Binghamton, NY 13901
Tel. No. (607) 772-7161
Fax No. (607) 772-7244

Grantee: President of the Common Council
City of Binghamton
City Hall
38 Hawley Street
Binghamton, NY 13901
Tel. No. (607) 772-7005
Fax No. (607) 772-7155

VI. SPECIAL CONDITIONS

A. The Common Council of the City of Binghamton (herein called "Council") shall have the opportunity to make recommendations annually regarding the loan policy of the Subrecipient. Should Council desire to make recommendation(s) regarding loan policy, said recommendation(s) shall be presented in final form to the Subrecipient's Board of Directors no later than 30 days prior to the end of the Subrecipient's fiscal year.

B. The Subrecipient shall comply with its loan guidelines in its development and retention of business and industry, except that any loans in an amount of \$25,000 or greater must be submitted to Council for its final approval.

C. The Subrecipient's Executive Director shall be prohibited from using "unrestricted funds", as defined by HUD regulations in an amount greater than \$750.00 per month without the expressed approval of Council.

D. Any façade loan in an amount of \$25,000 or greater must be submitted to Council for its final approval.

E. Continuing with the execution of this Agreement, two Voting Members of the Subrecipient's Board of Directors shall be Members of Council. The President of Council shall appoint one member from the Majority party, and one member from the Minority party. The term of office of these members shall expire at the end of the term of the President of Council.

F. As a condition of this Agreement, the Grantee agrees to make available office space at City Hall, 38 Hawley Street, Binghamton, NY to the Subrecipient. The Subrecipient agrees to use such office space and employ personnel from the City of Binghamton Office of Economic Development to provide the services herein. The Subrecipient shall pay the Grantee an annual amount of One Hundred Forty Four Thousand Dollars (\$144,000.00) for such use of office space and personnel. Payment of the annual amount will be made on a quarterly basis, due thirty (30) days from the date the Subrecipient receives payment pursuant to paragraph IV above.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations

concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the Grantee's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B.. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage or be included in the City of Binghamton's self-insured coverage for all of its employees involved in the performance of this Agreement.

C. Insurance & Bonding

The Subrecipient is not required to provide bonding or insurance.

D. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

E. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each party, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

F. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” annexed hereto as Exhibit “B”. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. The retention period for records related to real property and equipment pertinent to the Agreement begins three years after final disposition. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is

prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, HUD, and the Inspector General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days of receipt. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133 annexed hereto as Exhibit "B".

C. Program Income

The Subrecipient shall report monthly to the Grantee all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the Agreement period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted annually to the U.S. Treasury.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Progress Reports

The Subrecipient shall submit progress reports to the Grantee at the same time of submitting payment requests as described in paragraph IV in a format prescribed by the Grantee. Failure to submit progress reports in a timely fashion will result in a delay of processing Subrecipient's claims.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this Agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48. The Subrecipient will also comply with the uniform administrative requirements of OMB Circular A-110 annexed hereto as Exhibit "B".

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to

the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

If the Subrecipient acquires a property, or conducts a project at a property, which is occupied at the time of this Agreement and displacement is required, the Subrecipient must comply with the relocation requirements of 24 CFR 92.353.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with the New York State Constitution, the laws and orders of the City of Binghamton and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient agrees to adopt and follow the Grantee's Affirmative Action Program upon execution of this Agreement.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written

representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own sub-subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s sub-subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s sub-subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this Agreement results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer and/or City of Binghamton's Commission on Architecture and Urban Design for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

As a public entity, the Subrecipient also acknowledges that the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87 apply to this Agreement.

Date _____

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

CITY OF BINGHAMTON

BINGHAMTON LOCAL
DEVELOPMENT CORPORATION

By _____
Matthew T. Ryan, Mayor

By _____
Merry A. Harris, Executive Director

Attest _____
Angela Holmes, City Clerk

Countersigned: _____
Charles L. Pearsall, Comptroller

Approved As To Form And Legal Sufficiency:

Kenneth J. Frank, Corporation Counsel

Binghamton Local Development Corporation & Binghamton Economic Development Office		
Budget	CDBG Year 39	2013
Exhibit A		
BUDGET LINE	DESCRIPTION	2013-2014 BUDGET AMOUNT
A6989.51000	Personal Services	
	Director Economic Development	\$55,080.00
	Asst. Dir. Economic Development	\$51,185.00
	Eco. Dev. Specialist - Fin. Analysis	\$47,466.00
	Eco. Dev. Specialist - Admin/Research	\$40,000.00
A6989.518000	Temporary Services	\$0.00
	Total Personal Services	\$193,731.00
	Operating Expenses	
A6989.54101	Office Supplies	\$2,800.00
A6989.54401	Professional Services	\$0
A6989.54701	Travel & Training	\$3,000.00
A6989.54702	Dues & Memberships	\$2,000.00
	Total Operating Expenses	\$7,800.00
	Other	
A6989.54742	City Marketing Expense	\$24,950.00
	Total Other	\$24,950.00
	Total City Funded	\$226,481.00
	BLDC Accounts	
UDAG	Audit	\$4,000.00
	BLDC Marketing & BPC	\$10,000.00
	Total BLDC Accounts	\$14,000.00
	Total Expenses	\$240,481.00
	CDBG Income	\$144,000.00
	CDBG Transfer to City General Fund	\$144,000.00